Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

BAYLOR MEDICAL CENTER AT IRVING
2001 BRYAN STREET SUITE 2600
DALLAS TX 75201 3005

Carrier's Austin Representative Box
05

MFDR Date Received
OCTOBER 16, 2006

Respondent Name
TRAVELERS INDEMNITY CO

MFDR Tracking Number
M4-07-0954-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated October 16, 2006: "UHC pd claim then recouped due to claim is a W/C filed to Travelers and denied. Timely filing reconsideration no response please consider payment @ stop loss + implants cost +10%. "

Amount in Dispute: $124,201.66

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated October 30, 2006: "This denial is based on the Texas Labor Code that bills must be sent to the carrier on a timely basis within 95 days from the date of service. This bill was received by the carrier on 4/24/06 which is 120 days from the hospital discharge date of 12/26/05. The provider had full knowledge of workers' compensation involvement. Pre-authorization was obtained through carrier pre-auth department."

Response Submitted by: Travelers

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 28, 2005 through December 26, 2005	Inpatient Hospital Services	$124,201.66	$3,354.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307, titled *MEDICAL DISPUTE RESOLUTION OF A MEDICAL FEE DISPUTE*, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. Texas Labor Code §408.027, titled *PAYMENT OF HEALTH CARE PROVIDER*, effective September 1, 2005, sets out the deadline for timely submitting the medical bills to the insurance carrier.

3. 28 Texas Administrative Code §102.4, titled *GENERAL RULES FOR NON-COMMISSION COMMUNICATION*, effective May 1, 2005, sets out general rules to determine when written documentation was sent.
4. 28 Texas Administrative Code §134.1, titled *USE OF THE FEE GUIDELINES*, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- 29-The time limit for filing has expired. Per Texas Labor Code 480.027, bills must be sent to the carrier on a timely basis, within 95 days from dates of service.

Issues

1. Did the requestor submit documentation to support the disputed bills were submitted timely in accordance with Texas Labor Code §408.027(a)?
2. Did the audited charges exceed $40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. Texas Labor Code §408.027(a) states "A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment."

   The respondent states in the position summary that "This bill was received by the carrier on 4/24/06 which is 120 days from the hospital discharge date of 12/26/05."

   The requestor states in the position summary that "UHC pd claim then recouped due to claim is a W/C filed to Travelers and denied." In support of their position, the requestor submitted a Claim Note report that indicates that initially the provider billed United Healthcare; then, on March 28, 2006 a paper claim was sent to Travelers Indemnity Co.

   The Division finds that the requestor did not support position that dates of service from November 28, 2005 through December 22, 2005 were submitted within the 95 day timeframe; however, dates of service for December 23, 2005 through December 26, 2005 were sent within the 95 day timeframe established in Texas Labor Code §408.027(a).

2. 28 Texas Administrative Code §134.401(c)(6)(A))(i) states "…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…" Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $161,096.22. The Division concludes that the total audited charges exceed $40,000.

3. The requestor in its position statement asserts that "Timely filing reconsideration no response please consider payment @ stop loss + implants cost +10%." As noted above, the Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) rendered judgment to the contrary. In its supplemental position statement, the requestor considered the Courts' final judgment and opined on both rule requirements. In regards to whether the services were unusually extensive, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. Rule §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The division finds that the requestor failed to demonstrate that the services in dispute were unusually extensive.

4. In regards to whether the services were unusually costly, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor asserts that because the ***billed charges*** exceed the stop-loss threshold, the admission in this case is unusually costly. The Division notes that audited charges are addressed as a separate and distinct factor described in 28 Texas Administrative Code §134.401(c)(6)(A)(i). Billed charges for services do not represent the cost of providing those services, and no such relation has been established in the instant case. The requestor fails to demonstrate that the ***costs*** associated with the services in dispute are unusual when compared to similar spinal surgery services or admissions. For that reason, the division rejects the requestor's position that the admission is unusually costly based on the mere fact that the billed or audited charges "substantially" exceed $40,000. The requestor does not list or quantify the costs associated with these resources in relation to the disputed services, nor does the requestor provide documentation to support a reasonable comparison between the resources required for similar types of surgeries. Therefore, the requestor fails to demonstrate that the resources used in this particular admission are unusually costly when compared to resources used in other types of surgeries.

5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical, intensive care unit (ICU) and cardiac care unit (CCU). On these dates, the claimant was in pre/post ICU; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was twenty eight days. As stated above in number 1, only dates of service December 23, 2005 through December 26, 2005 were sent within the 95 day timeframe and are eligible for reimbursement. Consequently, the per diem rate allowed is $3,354.00 for the three days.
- 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)." A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at $13,518.00 rendered on December 15, 2005. As stated above in number 1, this date was not sent within the 95 day timeframe. As a result, reimbursement cannot be recommended.

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (ii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352,359)." A review of the submitted hospital bill finds that the requestor billed $3,534.25 for revenue code 350-CT Scan rendered on dates of service November 28, 2005, December 6, 2005, and December 23, 2005. As stated above in number 1, only dates of service December 23, 2005 through December 26, 2005 were sent within the 95 day timeframe and are eligible for reimbursement. As a result, the only CT scan eligible for reimbursement is the one rendered on December 23, 2005. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 350 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399)." A review of the submitted hospital bill finds that the requestor billed $1,257.25 for revenue code 390-Blood/Storage Processing rendered on dates of service December 3, 2005 through December 18, 2005. As stated above in number 1, these dates were not sent within the 95 day timeframe. As a result, reimbursement cannot be recommended.

- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than $250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed $350.15/unit for Propofol 100ml rendered on December 15 and 16, 2005; $431.20/unit for Albumin 25% 50cc rendered on December 15, 2005; $1,135.10 for Thrombin Spray Kit 20,000 rendered on December 15, 2005; and $485.55/unit for Cardioplegia Soln 1000ml. As stated above in number 1, these dates were not sent within the 95 day timeframe. As a result, reimbursement cannot be recommended.

Conclusion

For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is $3,354.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $3,354.00 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	12/17/2013 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.